



CALIFORNIA POLYTECHNIC STATE UNIVERSITY  
 San Luis Obispo, California 93407  
 ACADEMIC SENATE  
 805.756.1258

MEETINGS OF THE ACADEMIC SENATE  
 Tuesdays, March 6 and March 13, 2007  
 UU220, 3:10 to 5:00pm

PLEASE KEEP THIS AGENDA FOR BOTH THE MARCH 6 AND 13 MEETINGS

- I. Minutes:  
Approval of minutes for the February 13, 2007 Academic Senate meeting (pp. 2-3).
- II. Communications and Announcement(s):  
President Baker's approval of AS-650-07 and AS-651-07 (pp. 4-5).
- III. Reports:  
Regular reports *[Please limit to 3 minutes or less]:*
  - A. Academic Senate Chair:
  - B. President's Office:
  - C. Provost:
  - D. Statewide Senate:
  - E. CFA Campus President:
  - F. ASI Representative:  
Special reports *[Please limit to 10 minutes or less]:*  
 Frank Vuotto, chair of Task Force on Textbook Pricing (pp. 6-14).
- IV. Consent Agenda:
- V. Business Item(s):
  - A. Curriculum proposal for Masters in Agricultural Education: Hannings, chair of Curriculum Committee, second reading (pp. 15-16).
  - B. Resolution on *Focus the Nation*: Greenwald, chair of Sustainability Committee, second reading (pp. 17-18).
  - C. Resolution Endorsing the ASCSU Resolution on the "Importance of Settling the Contract Between the CSU and CFA": Executive Committee, first reading [a waiver will be asked that this resolution be moved to a second reading on March 6] (pp. 19-20).
  - D. Resolution on Accessibility of Instructional Materials: Schaffner, chair of Instruction Committee, first reading (pp. 21-22).
  - E. Resolution Against an Attack on Iran or Syria Without Prior Congressional Authorization: Russell, academic senator, first reading (pp. 23-35).
- VI. Discussion Item(s):
- VII. Adjournment:

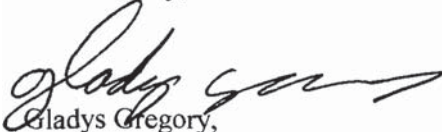
**CALIFORNIA POLYTECHNIC STATE UNIVERSITY**  
**San Luis Obispo, California 93407**  
**ACADEMIC SENATE**  
**805.756.1258**

**MINUTES OF**  
**The Academic Senate**  
**Tuesday, February 13, 2007**  
**UU 220, 3:10 to 5:00 p.m.**

- I. Minutes: The minutes of the January 23 meeting were approved as presented.
- II. Communications and Announcements: Giberti reminded all senators to sign in at every meeting and to please turn cell phones off.
- III. Regular Reports:
  - A. Academic Senate Chair: Giberti attended a senate chairs meeting at the Chancellor's Office where contract negotiations were discussed. Various senates have endorsed the resolution passed by the statewide Academic Senate asking CFA and CSU to settle the dispute. There will be a special Academic Senate meeting to discuss Access to Excellence on February 27 in UU 220 from 3:00-5:00 p.m. Caucus chairs will make short presentations regarding Domain 6, Campus / System Identity.
  - B. President's Office: none.
  - C. Provost's Office: Durgin reported that an architectural firm had been selected to design the new science and math building.
  - D. Statewide Senate: Foroohar reported on discussions of several statewide resolutions.
  - E. CFA Campus President: Saenz reported that fact-finding began on February 9.
  - F. ASI Representative: Maki reported that a grant was obtained by the City of San Luis Obispo to extend the hours of operation for the city bus system.
  - G. Special Reports:
    - A. Andrew Schaffner, Chair of the Instruction Committee, requested Executive Committee input before drafting a resolution in response to CSU Executive Order 926. This requires all system-wide policies regarding disability support and accommodations to be documented, evident, and in full compliance with federal and state laws. Presentation notes are available at:  
<http://www.calpoly.edu/~acadsen/Documents/Accessibility%20to%20Instructional%20Materials.pdf>  
The CSU coded memo that includes a timeline of how each campus is to address the issue of accessibility is available at:  
<http://www.calpoly.edu/~acadsen/Documents/Code%20AA-2007-04.pdf>
    - B. Manzar Foroohar, Chair of the Faculty Affairs Committee, reported that the committee has been considering a resolution on MPP searches for the past two years. The two major issues are transparency of procedures and participation in the selection process by faculty members of all ranks.

- V. Consent Agenda:
- A. CAFES, CENG, and OCOB curriculum proposals were approved by consent.
- VI. Business Item(s):
- A. Curriculum proposal for Masters in Agricultural Education: Hannings, Chair of the Curriculum Committee, explained that this used to be the Masters in Science with a specialization in Agricultural Education. This item will return as a second reading item on March 6.
- B. Resolution on *Focus the Nation* (Greenwald): This resolution requests Senate endorsement for Cal Poly's participation in the Global Warming Solutions for America symposium to occur in 2008. This item will return as a second reading item on March 6.
- VII. Discussion Item(s): none.
- VIII. The meeting was adjourned at 5:00 p.m.

Submitted by,



Gladys Gregory,  
Academic Senate

State of California

**Memorandum**

SAN LUIS OBISPO  
CA 93407

To: Bruno Giberti  
Chair, Academic Senate

Date: January 16, 2007

From: Warren J. Baker  
President

Copies: W. Durgin  
D. Conn

Subject: Response to Academic Senate Resolution AS-650-06  
Resolution on Revision of Cal Poly Mission Statement

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This memo acknowledges receipt and approval of the above-referenced Academic Senate resolution.

Please extend my thanks to all those who developed the revised Cal Poly Mission Statement, especially those who contributed to the Academic Senate retreat and to the members of the framing committee. I believe the new Mission Statement will serve the University well and congratulate all involved in its development for a job well done.

State of California

**Memorandum**

To: Bruno Giberti  
Chair, Academic Senate

Date: February 22, 2007

From: Warren J. Baker  
President

Copies: W. Durgin  
D. Conn

Subject: Response to Academic Senate Resolution AS-651-07  
Resolution on Cal Poly Learning Objectives

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This memo acknowledges receipt and approval of the set of institutional learning objectives entitled "Cal Poly Learning Objectives," which were attached to the resolution.

Please extend my thanks to all those who worked on developing this first set of campus learning objectives, especially those who contributed to the Academic Senate retreat and to the members of the framing committee.

# **Academic Senate Task Force on Textbook Pricing**

## **Final Report**

Submitted on February 26, 2007

by

Frank Vuotto, Task Force Chair and Academic Senate Vice Chair

This report was reviewed by all task force members before being submitted to the Academic Senate as an official document.

### **Introduction and Background Information**

On January 31, 2006, the Academic Senate Faculty Affairs Committee proposed a resolution on textbook pricing. The original resolution was revised on February 28, 2006 and approved by the Academic Senate (AS-646-06) on May 16, 2006 (See Appendix A).

The resolution called for the creation of an Academic Senate Task Force on Textbook Pricing. The specific charge of the task force, as stated in the resolution, was to "look into the feasibility of developing a central publicly accessible website which will provide information about textbook requirements and alternative formats and pricing of textbooks for Cal Poly courses."

In addition, the resolution identifies Information Technology Services (ITS), Cal Poly Corporation, El Corral Bookstore, and Associated Students Inc. (ASI) as collaborative partners in the Task Force's official charge.

The Task Force members include:

Task force chair and Academic Senate representative: Frank Vuotto, Academic Senate Vice Chair; ITS representative: Tim Keams, CIA; Faculty Affairs Committee representative: Manzar Foroohar, faculty; Academic Affairs representative: Kimi Ikeda, Assistant Vice Provost; El Corral Bookstore representative: Frank Cawley, Director; Cal Poly Corporation representative: Frank Mumford, Executive Director; and ASI representative: Todd Maki, ASI President.

In addition, Cindy Giambalvo (El Corral) and Nicole Stromsness (ASI) participated in the discussions.

### **Industry Overview**

The soaring price of college textbooks has forced schools, publishers, and lawmakers to find ways to ease the financial burden on students and their parents.

According to the Association of American Publishers, a New York-based trade group, college textbooks are a huge industry with combined sales of new and used textbooks amounting to nearly \$8 billion annually. A recent Government Accountability Report states that textbook prices have almost tripled between 1986 and the end of 2004 while tuition and fees increased by 240%<sup>ii</sup>.

One major driver of textbook prices is the current oligopoly in the market. Dave Rosenfeld, co-coordinator of the Student Public Interest Research Group's (PIRG) Campaign for Affordable Textbooks, claims that the lack of competition in the industry continues to drive-and directly impact-higher textbook prices<sup>iii</sup>.

Many states are now developing legislation regarding textbook costs. For example, a number of states have recently passed laws encouraging professors to be more "textbook cost conscious" and urging them to consider cutting back on big packages of materials that may not be used in class.

A recent report issued by the National Association of College Stores states that the legislatures in nearly 20 of the 50 states have passed-or are considering-bills designed to lower textbook prices. Bundled textbook packages were especially targeted and several state colleges are now required to create policies regarding bundled texts.

Additionally, student governments on more than 25 campuses have passed resolutions demanding a reduction in the cost of textbooks.

Here are some examples of recent state laws:

- A new Virginia law addresses the bundling of textbooks with other materials
- Washington State requires bookstores to inform faculty of the costs and frequency of revisions
- Illinois is reviewing the feasibility of textbook-rental programs
- In Connecticut, publishers must now make pricing information and new-edition schedules available for professors at state universities
- California has established advisory legislation that urges interested parties to work together (See Appendix B)

Congress is looking at the textbook issue as well. In March 2006, the House passed legislation that takes aim at bundled packages and calls on colleges and universities to develop book-renting, lending, and swap policies. Professors argue that their academic freedom could be jeopardized if they were compelled to choose books based partially on price<sup>iv</sup>. Anita Levy, a senior program officer at the American Association of University Professors in Washington, D.C., supports the idea that faculty should not be forced to negotiate with publishers to reduce the net price of textbooks.

Most experts agree, however, that there is little that can be done to compel publishers to lower their prices. The majority of recent bills and pending legislation is advisory and uses non-binding words and phrases such as *encourage*, *urge*, *consider*, and *where possible*.

### **Situation Analysis and Key Issues**

The first meeting of the Academic Senate task force was held in December 2006. The general consensus was that developing a central publicly accessible website that provides information about textbook requirements and alternative formats and pricing of textbooks for Cal Poly courses is crucial and merits serious consideration. However, such a website already exists and is managed by EI Corral Bookstore.

EI Corral Bookstore maintains an informative website (<http://www.elcorralbookstore.com>) that provides information on a variety of textbook options such as sell backs, VIP buyback, textbook orders, textbook reservation schedule, textbook buyback schedule, used books, textbook lookup, exchange programs, and other relevant information.

On January 17, 2007, the Chair of the Academic Senate task force requested a special closed fact-finding meeting that brought together representatives from ASI (Todd Maki



and Nicole Stromsness) and El Corral Bookstore (Frank Cawley and Cindy Giambalvo). The purpose of the meeting was to identify specific issues that impact textbook prices and to evaluate strategies that might be utilized to effectively distribute helpful and relevant information to the Cal Poly community.

The following issues were identified as having a direct impact on textbook pricing-and student frustration:

- Requisitions: Late requisitions<sup>1</sup> by faculty have the greatest impact on pricing (e.g., the used-book market dries up, buybacks)
- Last minute changes: 15% of instructors<sup>2</sup> change their mind on textbook purchases (e.g., a new edition versus a different book)
- Timely data: The bookstore cannot post textbook information too early because the information might change and the posted data may become incorrect
- Teaching notification: Some lecturers receive limited notice that they will be teaching a course and therefore submit late requisitions
- Bundles and required readings: Many faculty post required course texts-many of which are bundled-and subsequently do not use the materials during the course

### **Recommendations**

The Taskforce supports the following recommendations:

- Encourage faculty to submit requisitions on time
- Promote the UU Message Box that lists books for sale by students
- Promote El Corral Bookstore programs designed to help students secure textbooks such as VIP Buyback, Textbook Reservation, Textbook Shopping Calendar, Rental Programs, and other related services
- Update the bookstore website so that it includes user-friendly navigation that highlights key links (e.g., *Textbook Look-Up*)
- Add the *Textbook Look-Up* link on the official ASI website
- Include El Corral Bookstore in the CTL New Faculty Orientation during fall conference. New faculty need to understand the importance of timely requisitions

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<sup>1</sup> The data is available from El Corral Bookstore.

<sup>2</sup> The data is available from El Corral Bookstore.

## **Conclusion**

After an exhaustive literature review on this topic<sup>3</sup>, the Chair believes that Cal Poly is doing everything possible to keep textbook prices as low as possible. In fact, Cal Poly currently offers many of the same options and programs being promoted on university campuses across the nation. These include:

- Book swaps
- Library reserves and electronic course packs
- Book rental programs
- Student websites that offer book exchange opportunities
- Resolutions (both state and campus based)
- Message boards to help students secure used books from other students
- Student groups that help facilitate sharing or trading books
- Cheaper e-materials and/or customized packages of texts

Finally, Frank Cawley, El Corral Bookstore Director, has indicated to the task force chair that he is open to suggestions and continuing dialog with key constituencies and will consider any relevant and plausible recommendations from faculty, staff, and students.

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<sup>3</sup> The literature review pulled information from a variety of resource types such as legal (Westlaw, Lexis-Nexis), government (Accountability Reports, Congressional Releases), education (Chronicle of Higher Education), mainstream (Factiva, Expanded Academic), and professional associations (National Association of College Bookstores, Association of American Publishers).

APPENDIX A

**Resolution AS-646-06**

RESOLUTION ON TEXTBOOK PRICING

AS-646-06

- WHEREAS, The Associated Students, Inc of Cal Poly (ASI) has expressed its concern regarding the rapid rise in textbook pricing by recently approving a resolution addressing this matter; and
- WHEREAS, The Academic Senate of Cal Poly has supported the principles set forth in the ASI resolution; and
- WHEREAS, The complexity of textbook pricing necessitates a comprehensive study of the issues and a search for solutions; and
- WHEREAS, The Academic Senate of Cal Poly recognizes that the high cost of certain textbooks and coursepacks can adversely affect the affordability of higher education for its students; and
- WHEREAS, The Academic Senate of Cal Poly and the University must protect the academic freedom of faculty in assigning textbooks and other course materials while recognizing the negative impact high textbook prices has on its students; therefore be it
- RESOLVED: That the Academic Senate of Cal Poly will establish a task force to work with Information Technology Services (ITS), Cal Poly Corporation and/or EI Corral Bookstore, and Associated Students Inc. (ASI) to look into the feasibility of developing a central publicly accessible website which will provide information about textbook requirements and alternative formats and pricing of textbooks for Cal Poly courses.

Proposed by: Academic Senate Faculty Affairs Committee

Date: January 31, 2006

Revised: February 28, 2006

Revised: May 16, 2006

## APPENDIXB

### California Education Code

#### CALIFORNIA EDUCATION CODE

#### SECTION 66406

<http://www.leginfo.ca.gov/calaw.html>

66406. (a) The Legislature finds and declares that the production and pricing of college textbooks deserves a high level of attention from educators and lawmakers because they impact the quality and affordability of higher education.

(b) The State of California **urges** textbook publishers to do all of the following:

(1) "Unbundle" the instructional materials to give students the option of buying textbooks, CD-ROMs, and workbooks "a la carte" or without additional materials.

(2) Provide all of the following information to faculty and departments when they are considering what textbooks to order, and post both of the following types of information on publishers' Internet Web sites where it is easily accessible:

(A) A list of all of the different products they sell, including both bundled and unbundled options, and the net price of each product.

(B) An explanation of how the newest edition is different from previous editions.

(3) Give preference to paper or online supplements to current editions rather than producing entirely new editions.

(4) Disclose to faculty the length of time they intend to produce the current edition so that professors know how long they can use the same book.

(5) Provide to faculty a free copy of each textbook selected by faculty for use in the classroom for placement on reserve in the campus library.

(c) The Trustees of the California State University and the Board of Governors of the California Community Colleges shall, and the Regents of the University of California are requested to, accomplish all of the following:

(1) Work with the academic senates of each respective segment to do all of the following:

(A) **Encourage** faculty to give consideration to the least costly practices in assigning textbooks, varying by discipline, such as adopting the least expensive edition when the educational content is equal, and using a selected textbook as long as it is educationally sound, as determined by the appropriate faculty.

(B) **Encourage** faculty to disclose both of the following to students:

(i) How new editions of textbooks are different from the previous editions.

(ii) The cost to students for textbooks selected for use in each course.

(C) Review procedures for faculty to inform college and university bookstores of textbook selections.

(D) **Encourage** faculty to work closely with publishers and college and university bookstores in creating bundles and packages if they

are economically sound and deliver cost savings to students, and if bundles and packages have been requested by faculty. Students should have the option of purchasing textbooks and other instructional materials that are "unbundled."

(2) **Require college and university bookstores to work with the academic senates** of each respective campus to do both of the following:

(A) Review issues relative to timelines and processes involved in ordering and stocking selected textbooks.

(B) Work closely with faculty or publishers, or both, to create bundles and packages that are economically sound and deliver **cost** savings to students.

(3) **Encourage** college and university bookstores to disclose retail textbook costs, on a per course basis, to faculty, and make this information otherwise publicly available.

(4) Encourage campuses to provide as many forums for students to have access to as many used books as possible, including, but not necessarily limited to, all of the following:

(A) Implementing campus-sponsored textbook rental programs.

(B) Encouraging students to consider on-campus and online book swaps so that students may buy and sell used books and set their own prices.

(e) Encouraging students to consider student book lending programs.

(D) Encouraging college and university bookstores that offer book buyback programs to actively promote and publicize these programs.

(E) Encouraging the establishment of textbook rental programs and any other appropriate approaches to providing high-quality materials that are affordable to students.

(d) **It is the intent of the Legislature to encourage** private colleges and universities to work with their respective academic senates and to encourage faculty to consider practices in selecting textbooks that will result in the lowest costs to students.

## REFERENCES

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- i Chaker, A. (2006, September 28). Efforts Mount To Cut Costs Of Textbooks - As Prices Rise At Twice the Rate of Inflation, States Pass Laws To Encourage Cheaper Alternatives. *The Wall Street Journal*.
- ii Textbook Costs Stir Concern. (2006, July 11) *Business Week Online*.
- iii Marcus, I. (2006, August 11). US Rage at Textbook Price Hike. *The Times Higher Education Supplement*.
- iv Roberts, S. (2006, April 25). Costly Textbooks Draw Scrutiny of Lawmakers. *The Wall Street Journal*.

Cal Poly, San Luis Obispo

Summary Statement of Proposed New Degree Program for  
Academic Master Plan Projection  
(one or two pages)

1. Title of Proposed Program.

Master in Agricultural Education

2. Reason for Proposing the Program.

The current degree program is a Master of Science in Agriculture with a specialization in Agricultural Education. The program has been in existence for more than 40 years. It is a professional, non-thesis degree for educators. The 2005 report of the program review committee recommended a change in title to distinguish this program from the Master of Science thesis-based offerings in the college. This is an existing program with a proposal to change only the name of the degree.

3. Anticipated Student Demand.

	Number of Students		
		3 years	5 years
	<u>at initiation</u>	<u>after initiation</u>	<u>after initiation</u>
Number of Majors	50	55	60
Number of Graduates	15	17	20

4. Indicate the kind of resource assessment used by the campus in determining to place the program on the academic plan. If additional resources will be required, the summary should indicate the extent of university commitment to allocate them and evidence that campus decision-making committees were aware of the sources of resource support when they endorsed the proposal.

This is an existing program within the college. Resources that currently exist will be used to offer the program under a new title. Program growth is expected to occur at a rate proportional to the annual number of newly credentialed teachers in agricultural education. The state staff in agricultural education for the California Department of Education anticipates numbers of credentialed teachers to increase by about 20 percent over the next five years. The resource commitment to support the program is not expected to change as a result because the number of total students remains relatively steady.

5. If the program is occupational or professional, summarize evidence of need for graduates with this specific education background.

Ninety-five percent (95%) of the candidates are meeting their "Professional Development" requirements for teaching in California's public schools. The

remaining 5 percent are working toward advancement in other areas of education within the agricultural industry.

The California Commission on Teacher Credentialing (CCTC) requires beginning teachers to develop and follow a Professional Development Plan that includes 150 hours of workshops, conferences, courses, or other approved activities to receive a "clear" credential in their discipline(s) and achieve tenure in the district. Course work in the program and the degree itself are evidence that teachers are meeting this portion of the credentialing process.

6. If the new program is currently a concentration or specialization, include a brief rationale for conversion.

The conversion is the outcome of discussions prompted by a recommendation of the external committee reviewing the MS program in the college as part of the program review process. Discussions ensued among members of the college's graduate studies & research committee. The committee unanimously supports the conversion to a new degree title.

7. If the new program is not commonly offered as a bachelor's or master's degree, provide compelling rationale explaining how the proposed subject area constitutes a coherent, integrated degree major which has potential value for students. If the new program does not appear to conform to the Trustee policy calling for "broadly based programs," provide rationale:

The new program has served many educators for more than four decades. The new name more clearly separates the existing program from the thesis-based offerings within the college. Several universities in other states (Tarleton State University, Texas Tech University, Texas A&M University, Oklahoma State University, Iowa State University, and others) offer non-thesis advanced degrees for agricultural educators. There appear to be no other programs that combine face-to-face classes with graduate rigor and sequenced instruction designed for practitioners working in California's educational system.

8. Briefly describe how the new program fits with the campus strategic plan.

Graduate studies in the College of Agriculture, Food & Environmental Sciences allow the student to pursue either a professional program designed to enhance the competencies of agricultural educators, or an academic program of graduate-level scholarly activities and research in one of several specializations. Graduates are prepared for professional level occupations in education. Specific occupations would be: high school instructor, community college instructor, and extension agent.



Adopted:

ACADEMIC SENATE of  
CALIFORNIA POLYTECHNIC STATE UNIVERSITY  
San Luis Obispo, CA

AS- -07

RESOLUTION ON  
*FOCUS THE NATION*

1 WHEREAS, In May 2003, the Academic Senate endorsed the Talloires Declaration,  
2 committing Cal Poly to a ten-point program of promoting sustainability in  
3 education; and  
4

5 WHEREAS, on January 23, 2007, the Academic Senate approved a set of learning objectives  
6 for Cal Poly students, one of which reads as follows: "Make reasoned decisions  
7 based on an understanding of ethics, a respect for diversity, and an awareness of  
8 issues related to sustainability"; and  
9

10 WHEREAS, Addressing the threats of global warming and climate change has become a  
11 crucial priority in educating students about sustainability; and  
12

13 WHEREAS, *Focus the Nation* is one way that colleges and universities can use their  
14 educational mandates to motivate their students and others to address these  
15 threats; and  
16

17 WHEREAS, Cal Poly, San Luis Obispo, in conjunction with colleges, universities, and high  
18 schools across the country, will organize a symposium about "Global Warming  
19 Solutions for America" on or around January 31 2008; therefore be it  
20

21 RESOLVED: That the Academic Senate of Cal Poly endorse the following statement and course  
22 of action formulated by the national *Focus the Nation* organizing committee:  
23

24 Global warming poses a serious threat to people and natural  
25 systems across the planet. Public and private policy decisions  
26 about global warming this decade will have impacts lasting for  
27 generations. To focus the nation's attention on this crucial  
28 issue, [Cal Poly, San Luis Obispo,] in conjunction with  
29 colleges, universities, and high schools across the country, will  
30 organize a symposium about 'Global Warming Solutions for  
31 America' on or around January 31 2008. On that day, faculty  
32 are strongly encouraged to travel with their classes to attend  
33 scheduled programs about climate change or to discuss it with  
34 their own students. The symposium program committee will  
35 work with interested faculty to develop appropriate material for

36 their classes and to insure that diverse disciplines are  
37 represented in symposium panels and workshops.

Proposed by: Academic Senate Sustainability Committee

Date: January 24, 2007

Revised: January 31, 2007

Revised: February 14, 2007

**Rationale:**

The threats of global warming and climate change are becoming more manifest every day. Our patterns of energy production and consumption need to undergo profound transformation within the next decade to avert possible catastrophic consequences by the end of the century. Educational institutions are obliged to join government, businesses, community organizations and individuals in raising awareness of the threats and searching for ways to bring about these transformations.

*Focus the Nation* is one way that colleges and universities can use their educational mandates to contribute to such an effort. Its goals are to shift the national conversation about global warming from fatalism to determination and to create a national educational dialog on policy options by involving 1,000 participating schools, 5,000 organizers, 20,000 presenters, and 3 million students in discussions of "Global Warming Solutions for America" on a single date, January 31, 2008, just before the first 2008 presidential primaries. [See <http://www.focusthenation.org>]

At Cal Poly, an organizing committee representing students and faculty from all colleges is developing programs culminating in this day's events. The committee's work will be facilitated by the endorsements of Cal Poly administration, faculty and student organizations. Such endorsements have already been provided by the Association for the Advancement of Sustainability in Higher Education (AASHE) and by the presidents of Lewis & Clark College, The University of the South, Smith College, and Mount Holyoke College, among others.

In May 2003, the Academic Senate endorsed the Talloires Declaration, committing Cal Poly to a ten-point program of promoting sustainability in higher education. The Senate's endorsement was followed by President Baker's signing the Declaration in August of 2003. The Declaration has served as a statement of commitment and a guide to action for Cal Poly's sustainability programs. Though more specific in scope, the endorsement of the resolution of support for *Focus the Nation* will similarly signify commitment and lead to action. The statement submitted herein for endorsement has been formulated by the national *Focus the Nation* organizing committee.

Adopted:

ACADEMIC SENATE  
of  
CALIFORNIA POLYTECHNIC STATE UNIVERSITY  
San Luis Obispo, CA

AS- -07

RESOLUTION ENDORSING THE ACADEMIC SENATE CSU  
RESOLUTION ON THE "IMPORTANCE OF SETTling THE CONTRACT  
BETWEEN THE CSU AND CFA"

- 1 WHEREAS, The Academic Senate CSU has urged local Senates to review and endorse the  
2 "Importance of Settling the Contract between the CSU and CFA" (AS-2782-  
3 07iFA, January 18-19, 2007); and  
4  
5 WHEREAS, The Academic Senate of Cal Poly has reviewed AS-2872-07iFA and finds the  
6 principles embodied to be consistent with the Academic Senate's role in  
7 advocating for a high quality system of higher education; therefore be it  
8  
9 RESOLVED: That the Academic Senate of Cal Poly endorse Academic Senate CSU resolution  
10 AS-2782-07iFA.

Rationale: AS-2782-07iFA (attached) indicates some of the reasons why having the contractual bargaining between the CSU system and the CFA reach a reasonable settlement as quickly as possible is in the best interest of the CSU as a whole. The resolution speaks to issues that have historically been in the domain of the Senate. Rapid resolution of the issues and adoption of a fair and equitable contract will help the CSU attract and retain high quality faculty who will continue to provide a superior education to the people of California. At the same time, funding to the system is not adequate to address the critical needs that currently exist, including those related to equitable compensation, workload issues and professional development. A concerted effort is required to obtain funding from the legislature and governor that more realistically reflects the actual needs of the system.

Proposed by: Academic Senate Executive Committee  
Date: February 13, 2007

ACADEMIC SENATE  
OF  
THE CALIFORNIA STATE UNIVERSITY

AS-2782-07/FA  
January 18-19,2007

**Importance of Settling the Contract Between the CSU and CFA**

- RESOLVED: That the Academic Senate California State University (CSU) reaffirm the role of the academy as a venue for creative, thoughtful and respectful discourse where conflicting perspectives can be debated and reasonable compromises reached; and be it further
- RESOLVED: That the Academic Senate CSU recognize that it is neither the role nor the responsibility of the Academic Senate CSU to participate in contract bargaining between the CFA and CSU; it is, however, the role of the Academic Senate CSU to advocate for actions and policies that produce a quality educational system; and be it further
- RESOLVED: That the Academic Senate CSU acknowledge that the climate that currently exists in the contract negotiation process undermines morale at all levels, compromises our efforts to provide quality instruction to our students, and damages our ability to recruit and retain high quality students, faculty, staff and administrators; and be it further
- RESOLVED: That the Academic Senate CSU again call attention to matters of faculty compensation, workload, and professional growth and development as critical contract issues that must be adequately addressed if the CSU is to recruit and retain the numbers of well-qualified faculty needed to provide high quality classroom instruction; and be it further
- RESOLVED: That the Academic Senate CSU urge negotiators for the CSU and the California Faculty Association (CFA) to use the fact-finding process as a means to reach a reasonable solution that addresses the critical issues without resorting to imposition or job actions; and be it further
- RESOLVED: That the Academic Senate CSU call upon the Legislature and Governor to address the unmet long term financial needs that exist within the CSU; and be it further
- RESOLVED: That the Academic Senate CSU forward this resolution to the Governor, Legislature, CSU Board of Trustees and Chancellor, the CFA and local campus senate chairs; and be it further
- RESOLVED: That the Academic Senate CSU urge local senates to review and endorse this resolution.

*RATIONALE: Rapid resolution of the issues and adoption of a fair and equitable contract will help the CSU attract and retain high quality faculty who will continue to provide a superior education to the people of California. At the same time, funding to the system is not adequate to address the critical needs that currently exist, including those related to equitable compensation, workload issues and professional development. A concerted effort is required to obtain funding from the Legislature and Governor that more realistically reflects the actual needs of the system.*

**APPROVED - January 18-19,2007**

Adopted:

ACADEMIC SENATE  
of  
CALIFORNIA POLYTECHNIC STATE UNIVERSITY  
San Luis Obispo, CA

AS- -07

RESOLUTION ON  
TIMELY ACCESSIBILITY TO INSTRUCTIONAL MATERIALS

1 WHEREAS, Cal Poly and the CSU have ongoing commitments to provide equal access to  
2 information resources to individuals with disabilities (per Cal Poly AS-187-85,  
3 AS-628-05, and CSU AS-2700-05 and January 2006 Executive Order 926); and  
4

5 WHEREAS, Cal Poly and CSU policies must comply with federal and state laws; and  
6

7 WHEREAS, CSU Executive order No. 926 and Coded Memo AA 2006-41 require that by June  
8 2007 following consultation with local senates all CSU campuses create plans to  
9 support faculty and staff practices that will ensure timely access to instructional  
10 materials; and  
11

12 WHEREAS, Cal Poly has a commitment to ensure all students have access to instructional  
13 materials in a timely manner; and  
14

15 WHEREAS, All students benefit when textbooks are ordered in a timely manner; and  
16

17 WHEREAS, Textbooks and course-packs are often required courseware and must be available  
18 to all students at the same time; and  
19

20 WHEREAS, Conversion and processing of campus-wide requests of textbooks and course-  
21 packs to accessible formats by the Disability Resource Center takes several  
22 weeks; be it therefore  
23

24 RESOLVED: Beginning July 2007, departments are required to order instructional materials for  
25 all courses requiring textbooks or course-packs at least six weeks prior to the start  
26 of the academic quarter; and be it further  
27

28 RESOLVED: Documented course exceptions to the six week deadline are permissible with  
29 justification by the Department Chair; and be it further  
30

31 RESOLVED: For as many courses as possible, departments will establish standing textbook  
32 orders with El Corral Bookstore so that textbooks will not need to be reordered  
33 each quarter; and be it further

34 RESOLVED: Any changes to standing textbook orders will be made at least six weeks prior to  
35 the start of the academic quarter; and be it further  
36

37 RESOLVED: Departments will establish processes to monitor and remind faculty who do not  
38 have their instructional material orders placed at least six weeks prior to the start  
39 of the academic quarter (e.g., faculty or staff instructional material coordinators);  
40 and be it further  
41

42 RESOLVED: Faculty are encouraged to choose course materials from publishers who provide  
43 accessible content; and be it further  
44

45 RESOLVED: Compliance to this plan will be annually reviewed by the Provost or designee, and  
46 if satisfactory compliance is not demonstrated, the Academic Senate will revisit  
47 this issue to recommend further action.

Proposed by the Academic Senate Instruction Committee  
Dated: February 20, 2007  
Revised: February 27, 2007

### Background

EO 926, the CSU Board of Trustees Policy on Disability Support and Accommodations states: "it is the policy of the CSU to make information technology resources and services accessible to all CSU students, faculty, staff and the general public regardless of disability." Coded Memorandum AA-2006-41 establishes a process for ensuring compliance with federal and state laws, and CSU policy regarding access to information technology and resources. One of the three priorities addressed in that plan includes instructional materials accessibility. Instructional materials, to the extent possible, must be accessible to students with disabilities at the same time they are available to any other student enrolled in that program. AA-2006-41 states, "By June 2007, following consultation with local senates as appropriate, each campus will create a plan to support faculty and staff practices that will ensure timely access to instructional materials. This plan will include: (1) Timely adoption of textbooks by faculty, and (2) strategy for identification of textbooks for late-hired faculty..." Timely adoption is important to allow time to work with vendors, publishers, and DRC staff to provide the necessary instructional materials.

EO 926 is available online at: <http://www.calstate.edu/EOIE0-926.html>

AA-2006-41 is available online at <http://www.calstate.edu/acadaff/codedmemos/AA-2006-41.pdf>

January 29, 2007

Dear Colleagues on the Academic Senate.

The following essay and resolution are founded on two central pillars: a) The integrity and preservation of the u.S. Constitution; and b) our promise to defend it.

This resolution is explicitly *non-partisan*. The resolution is not about the proposed "troop surge"-that's another issue. My arguments here are historical, legal, and in one or two instances strategic. I respectfully ask that you take ten minutes and read the whole essay before passing judgment. Thank you.

Sincerely,

Dr. Craig H. Russell

Music Dept. & member of the  
Academic Senate, CLA

**Cosponsors of the Resolution:**

Myron Hood (Academic Senate & Mathematics)

Harvey Greenwald (Academic Senate & Mathematics)

Paul Rinzler (Academic Senate & Music)

Steven Marx (English, DTA winner)

Kevin Clark (English, DTA winner)

William "Memo" Martinez (Modern Languages, DTA winner)

Linda Vanasupa (Materials Engineering, DTA winner)

Adopted:

ACADEMIC SENATE  
of  
CALIFORNIA POLYTECHNIC STATE UNIVERSITY  
San Luis Obispo, CA

AS- -07

RESOLUTION AGAINST AN ATTACK ON IRAN OR SYRIA  
WITHOUT PRIOR CONGRESSIONAL AUTHORIZATION

1 WHEREAS, A preemptive attack on Iran or Syria by land, sea, or air--ordered by the President  
2 and Vice President without prior authorization from Congress--cannot be  
3 justified or defended using the theory of anticipatory self-defense as articulated in  
4 the legal precedent of the Caroline incident of 1837; and  
5

6 WHEREAS, A preemptive attack on Iran or Syria by land, sea, or air--ordered by the President  
7 and Vice President without prior authorization from Congress--is in direct  
8 violation of Article 1, Section 8, Clause 11 of the Constitution that states that only  
9 "the Congress shall have power to...declare war"; and  
10

11 WHEREAS, A preemptive attack on Iran or Syria by land, sea, or air--ordered by the President  
12 and Vice President without prior authorization from Congress--is in open  
13 defiance of Chapter I, Article 2, Sections 3 & 4 and Chapter VI, Article 33,  
14 Section 1 and Article 37, Section 1 of the United Nations Charter, and by  
15 extension, is therefore in direct violation of Article VI of the Constitution of the  
16 United States; and  
17

18 WHEREAS, A preemptive attack on Iran or Syria by land, sea, or air--ordered by the President  
19 and Vice President without prior authorization from Congress--would produce  
20 unforeseen consequences that potentially could be ruinous, calamitous, and  
21 contrary to the inherent interests of the United States of America; and  
22

23 WHEREAS, The founding fathers-George Washington, Thomas Jefferson, and James  
24 Madison--explicitly warn against the consolidation of power in a single branch of  
25 government through encroachment and usurpation, and since a preemptive attack  
26 on Iran or Syria without prior congressional authorization will lead to the  
27 dangerous consolidation of power in the hands of the Executive Branch by  
28 redistributing the war-making powers of Congress to the Executive Branch; and  
29

30 WHEREAS, The United States should first attempt diplomacy through direct talks with Iran  
31 and Syria before initiating or escalating military confrontations; and



32 WHEREAS, Every member of the faculty and of the Academic Senate has sworn an oath to  
33 defend the Constitution of the United States of America and therefore is  
34 compelled to act if they determine the Constitution is threatened; and  
35

36 WHEREAS, The Constitution of the United States is indeed threatened by a president who  
37 claims that he has the inherent right to authorize and initiate an attack on a  
38 sovereign nation without prior and explicit congressional approval; therefore be it  
39

40 RESOLVED: That the Academic Senate comply with its oath to defend the Constitution of the  
41 United States by openly declaring its opposition to the Bush Doctrine as  
42 inherently incompatible with the provisions of the Constitution; and be it further  
43

44 RESOLVED: That the Academic Senate of Cal Poly declare its opposition to any presidential  
45 order to execute a preemptive attack on Iran's and Syria's sovereign territories-  
46 by either land, sea, or air-without a prior Act of Congress that would specifically  
47 and unambiguously include Iran or Syria in its resolution authorizing the use of  
48 military force; and be it further  
49

50 RESOLVED: That the Academic Senate send a copy of this resolution to the Academic Senate  
51 of each CSU campus and to the statewide Academic Senate asking for their  
52 support; and be it further  
53

54 RESOLVED: That the Academic Senate send a copy of this resolution to each member of the  
55 California delegation in the U.S. Congress; and be it further  
56

57 RESOLVED: That we formally request that the members of our California delegation reassert  
58 their constitutional decision-making powers over the declarations of war and  
59 peace as prescribed in the U.S. Constitution; and be it further  
60

61 RESOLVED: That we formally request that the members of our California delegation challenge  
62 the president's unconstitutional usurpation of war-making powers; and be it  
63 further  
64

65 RESOLVED: That we formally demand of the members of California's congressional delegation  
66 that if and when the President and Vice President initiate a preemptive attack on  
67 Iran or Syria without prior congressional authorization that specifically and  
68 unambiguously includes Iran or Syria in its resolution authorizing the use of  
69 military force, that the California congressional delegation submit articles of  
70 impeachment against the President and Vice President immediately after the  
71 unauthorized and unconstitutional attack.

## **Our Nation and Constitution in Peril**

An Essay and Resolution authored by Craig H. Russell

January 14, 2007

### **A Prelude: The Promise**

I remember sitting in Dean Ericson's office over in the Faculty Office Building back in 1983; Jon was sitting in his imperial chair, sliding a contract across his desktop for me to sign so that I could start my new job as a music professor here at Cal Poly. I was thrilled. At one point, however, I discovered that as a condition for employment with the state of California, I had to take an oath promising to defend its constitution and the Constitution of the United States of America.<sup>1</sup> "How laughable!" I thought to myself. "I'm a guitar player, and I teach music appreciation. What am I supposed to do if there's trouble?" At the time, I thought it was rather silly, but I *did* sign my name. I raised my hand and swore that oath.

I made a promise. We all did.

### **Threatened Attack on Iran & Syria: The Threat to the Constitution**

Four nights ago, in a televised address to the nation, George W. Bush offered unsettling words in which he threatened Iran and Syria with probable military strikes by U.S. forces. He stated:

Iran is providing material support for attacks on American troops. We will disrupt the attacks on our forces. We'll interrupt the flow of support from Iran and Syria. And we will seek out and destroy the networks providing advanced weaponry and training to our enemies in Iraq.

We are also taking other steps to bolster the security of Iraq and protect American interests in the Middle East. I recently ordered the deployment of an additional carrier strike group to the region. We will expand the intelligence sharing and deploy Patriot air defense systems to reassure our friends and allies. We will work with the governments of Turkey and Iraq to help them resolve problems along their border. And we will work with others to prevent Iran from gaining nuclear weapons and dominating the region?

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<sup>1</sup> Government Code Section 3102: Oath of Allegiance and Declaration of Permission to Work for Persons Employed by the State of California. "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."  
[www.documents.dgs.ca.gov/osp/pdf/std689.pdf](http://www.documents.dgs.ca.gov/osp/pdf/std689.pdf)  
target="\_blank"><http://72.14.253.104/search?q=cache:Q5Gmt2neePMJ:www.documents.dgs.ca.gov/osp/pdf/std689.pdf+California+Government+Code,+Oath+of+Allegiance&hl=en&gl=us&ct=clnk&cd=1>

<sup>2</sup> Transcript of President Bush's Address to the Nation on U.S. Policy in Iraq. *The New York Times*, January 11, 2007 (section A18),

With the arrival of the aircraft carrier U.S.S. Eisenhower (along with its nuclear submarine, two destroyers, and cruiser), the U.S. has consolidated enormous firepower near the Persian Gulf. Patriot missile batteries are at the ready. Some of them have nuclear "bunker busters." These weapons cannot be used in combating improvised explosive devices (IEDs), sectarian death squads, or sniper fire in Iraq. No, these naval battle groups are intended to threaten Syria and Iran with a major air attack within their sovereign borders, on the pretext that they are assisting their Shia friends in Iraq (which is probably true). Syria and Iran are influencing events within Iraq, and any rational Middle East policy has to address that. However, a unilateral decision by Mr. Bush to attack Iran or Syria-without prior, unequivocal authorization from Congress-is not only foolhardy and dangerous, but it constitutes a violation of the Constitution of the United States.

Mr. Bush, however, has tried to finesse the issue and dodge the Constitution's framework by formulating a new and highly dangerous policy known as "The Bush Doctrine." This perilous theory rests on two flawed arguments: 1) a misreading of precedent set by the Caroline incident in 1837; and 2) a controversial theory known as the "unitary executive."

### **The Caroline Incident and the Fallacy of the Bush Doctrine**

George Bush has put forward a theory of "forward deterrence," also known as "The Bush Doctrine," in which he asserts that the President (acting as Commander in Chief) has the authority to attack any nation or any group that might pose a future threat to U.S. interests.<sup>3</sup> Condoleezza Rice floated this idea out before the press in the build-up to the Iraq War, when she asserted: "Anticipatory self-defense is not a new concept ... You know, Daniel Webster actually wrote a very famous defense of anticipatory self-defense...,"<sup>4</sup> She is referring to Daniel Webster's legal argument made in the aftermath of the Caroline incident. In December, 1837, the American ships in New York supplied French Canadians with arms in their rebellion against the British. In trying to stop these arms shipments, the British boarded the *Caroline* (an American vessel), set it on fire, and sent it over Niagara Falls.<sup>5</sup> They tried to defend this transgression in international waters by stating that it was necessary self-defense. Three years later, however, Daniel Webster (the new American Secretary of State) took a different stance and explained why the British actions were illegal. He acknowledged that anticipatory self-defense could be acceptable, but *ONLY* if the danger is "instant, overwhelming, leaving no choice of means, no moment for deliberation.... It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty...,"<sup>6</sup>

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<sup>3</sup> Charles W. Kegley & Gregory A. Raymond. "Global Terrorism and Military Preemption." <http://www.palgrave-journals.com/ip/journal/v41/n1/pdf/8800064a.pdf?file=/ip/journal/v41/n1/pdf/8800064a.pdf>.

<sup>4</sup> *New York Times*, 27 Sept. 2002.

<sup>5</sup> History News Network (HNN), "Would Daniel Webster Approve an Attack on Iraq," 10-8-02. <http://hnn.us/articles/1024.html>.

<sup>6</sup> HNN, "Would Daniel Webster Approve an Attack on Iraq."

For Webster's stance on the Caroline incident to be applicable as a valid precedent here, the perceived threat from Iran or Syria has to meet *all* of Webster's criteria, not just some.

- 1) The threat must be sudden or "instantaneous."
- 2) The danger must be "overwhelming."
- 3) The *only* course left must be immediate, with no time for deliberation.

The growing menace posed by Iran and Syria does not meet any of those criteria. The threat is growing, but not instantaneous. The danger posed by Iran and Syria is serious, but not overwhelming. Although we must act to confront our problems, there still is time for deliberation. We have not even tried direct diplomacy with Iran and Syria as an option (and that was one of the most urgent recommendations proposed by the Baker-Hamilton Iraq Study Group). The President has rattled his saber. If he were to take the next step and order a "preemptive attack" against either nation within their sovereign boundaries, it would be foolish and patently illegal. The Caroline incident is not a viable precedent for such a military strike.

### The Fallacy of the "Unitary Executive" Bush & Cheney-vs.-the Founding Fathers

In the last six years, Mr. Bush and Mr. Cheney have bestowed upon themselves unchecked powers not explicitly granted in the Constitution, defending their usurpations as allowable under "executive privilege"-also known as the theory of the "Unitary Executive." For instance, Mr. Bush and Mr. Cheney have argued that since the President is designated the "Commander in Chief" of all military forces by the Constitution, he has inherent authority to do whatever he thinks is necessary---even if those actions are never scrutinized or authorized by Congress nor ever validated by the Courts as being constitutional or legal. Dick Cheney has given verbal acknowledgment of the checks and balances of the Constitution but in the same breath has contradicted those very concepts with the startling assertion, "given the world that we live in . . . the president needs to have unimpaired executive authority..<sup>7</sup> In this world of unchecked presidential prerogative we have seen the following: widespread wiretapping of Americans' phone lines by the National Security Administration without a warrant; the government's spying on citizens by opening their mail without a warrant; the suspension of habeas corpus even in the case of American citizens; the detaining of hundreds of people in Guantanamo without a recognized legal framework that would enable them to know the charges against them or the chance to confront their accusers; the widespread use of "extraordinary rendition" where individuals are kidnapped by American agents and then flown to secret torture camps in "friendly" client nations; hundreds of "signing statements" by a president who signs enacted legislation into law while simultaneously

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<sup>7</sup> See Vice President Cheney's views as given during James Taranto's interview, "A Strong Executive: Dick Cheney discusses presidential power and foreign policy," *The Wall Street Journal*, January 28, 2006. <http://home.nyc.rr.com/taranto/cheney.htm>.

subverting that same legislation by proclaiming that he and the entire Executive Branch are exempt from its provisions. Nowhere in the Constitution are these weighty privileges granted to the Executive Branch on the basis of the President serving as "commander in chief." Nowhere.

And nowhere is government's power more awesome and sobering than its power to make peace and war. It is imperative that we as citizens, as sworn protectors of the Constitution, ask ourselves: on what constitutional authority can a president send our armed forces into conflict without prior congressional authorization? What are the ramifications of a rash and impetuous confrontation against Iran and Syria? What are the long-term implications to our system of government and the inevitable threat to our Constitution that a "preemptive war" against Iran or Syria would present?

### *The Constitution's Separation and Balance of Powers*

Granted, Article 2 of the Constitution gives the power to *direct* a war to the president. However, the Constitution simultaneously assigns the authority to *decide* whether or not to go to war *solely* to the Congress (Article 1, Section 8, Clause 11). The framers of the Constitution thus established a division of powers. Simply stated:

Congress declares the wars and the President commands them.

What would happen if the President were to encroach on the war-waging powers of the Congress? Alexander Hamilton and James Madison debated this very point. Hamilton had served directly under General Washington and wanted to grant him the powers to wage war. Madison was of a different mind. Even though the president in question was George Washington—a man respected and revered by all—Madison was reticent and fearful about granting to the president this formidable power. He explains:

Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether a *war ought* to be *commenced, continued, or concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of the executing from the power of enacting laws.<sup>8</sup>

Madison later makes an even more persuasive point: the president has the most to gain by entering a war, since it will be the commander in chief who will obtain all the glory. Therefore, a judicious congress must keep the president's ambitions in check. He states:

In no part of the constitution is more wisdom to be found than in the clause which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture to heterogeneous powers, the trust and the temptation would be too great for any one man; not such

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<sup>8</sup> James Madison (under the pseudonym "Helvidius") to Alexander Hamilton (under the pseudonym "Pacificus") in the *Gazette of the United States*. August 24, 1793.

as nature may offer as the prodigy of many centuries, but such as may be expected in the ordinary succession of magistracy. War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to disperse them. In war, the honors and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow that they are to encircle. The strongest passions, the most dangerous weaknesses of the human breast; ambition, avarice, vanity, and the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace. Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states-in proportion as they are free-to disarm the propensity of its influence.<sup>9</sup>

Madison, the chief architect of our Constitution, could not be any clearer. Under no circumstance should a president be allowed to commence a new war or widen an old one by engaging a "new" enemy without the clear, unequivocal mandate from Congress. To do so would be a violation of his sworn oath of office to uphold the Constitution of the United States, and as such would be grounds for impeachment.

President George Washington, the father of our country, warned against the rise of an overly powerful president in his Farewell Address in 1796, urging that we remain faithful to the letter of the law as spelled out in our Constitution. Although he did not use the exact term "unitary executive," he nevertheless directly confronts this concept as dangerous and inimical to our form of government and interests of our nation. Washington raises the alarm and counsels us to guard against the usurpation and seizure of constitutional powers. He explains:

It is important, likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one

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<sup>9</sup> Madison to Hamilton in the *Gazette of the United States*, September 14, 1793.



instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit, which the use can at any time yield.

Washington is clear: no branch can encroach on the political powers specifically vested in the other branches. If "new threats" or conditions arise, Washington counsels that they should be met by amending the Constitution. He warns, however, that modification of the Constitution through encroachment or usurpation threatens the very fabric of government and democracy. The Bush Doctrine flies in the face of Washington's admonition. Whenever George Bush becomes the "decider" and unilaterally defines who the enemy is and when they should be attacked, he has intruded on the explicit domain of the Congress. Mr. Cheney and Mr. Bush repeatedly tell us that everything has changed after 9/11. "It's a new world," they tell us. It is their theme song. Well, it may be true. But if that is the case, then we must follow President Washington's advice and meet this new world by deliberation and by amending the constitution, not through passive acquiescence to an ambitious White House that seizes constitutional powers and privileges previously assigned to Congress.

Yet another of our founding fathers, Thomas Jefferson, speaks to our present condition as if he were alive today. He wrote extensively about economic policy and the danger that a swelling national debt poses to the national security. While living in Paris, his extensive correspondence with Madison often touches upon the follies of war in Europe and the way that despotic rulers sought fame and glory while bankrupting their countries in the process. He eloquently articulates that the chief executive-the president-should not be the one who decides matters of war and peace. That must be the exclusive purview of Congress who controls the purse strings. Writing to Madison on September 5, 1769, Jefferson laments:

[Europe has suffered] contagious and ruinous errors ... [due to] armed despots with means, not sanctioned by nature, for binding in chains their fellow men. We have already given in example one effectual check to the Dog of war, by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend [the money] to those who are to pay.

We have then, a trio of voices-all of them presidents-who all unequivocally contradict Mr. Bush's and Mr. Cheney's desire to allow the president to enter into wars, unchecked by prior legislative authorization. Washington (the father of our country), Madison (the chief architect of our Constitution), and Jefferson (the author of the Declaration of Independence) all exclaim in one voice: Congress, not the President, has the right to wage war and peace. The President's role is implementation, not authorization.

### **International Law and its Relation to the U.S. Constitution**

The United States is a signatory to the Charter of the United Nations. Violence and the threat of the use of force are specifically prohibited. Chapter 1, Article 2 states:

Section 3: All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Section 4: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Chapter VI of that same Charter is devoted to "Pacific Settlement of Disputes." Two of the most important regulations state:

Article 33, Section 1: The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 37, Section 1: Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

The process is spelled out for us: do not threaten war as a first course, but instead try to seek a solution through diplomacy and negotiation. If that fails, then the next step is to take the impasse to the Security Council. This is not only good advice; this is the *Law of the United States*, for Article VI to the U.S. Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby.

This clause in the Constitution is critical for it places the provisions stipulated in the United Nations Charter under the umbrella of United States law. A clause in the U.N. charter is more than "advice" that we can casually ignore. On the contrary, because we are a signatory, we are bound by its provisions; they become part of the canon of U.S. law. Once again, if Mr. Bush and Mr. Cheney were to launch a preemptive attack on Iran or Syria, it would be in direct contravention of Article VI of the U.S. Constitution.



## "Norm Transmission" and the Spread of Preemptive War

If we attack other nations in a preemptive way, then we encourage other nations to do the same. What's to prevent Pakistan from launching a preemptive attack against India? What would constrain China from invading Taiwan? Would North Korea justify a preemptive invasion of South Korea? Some scholars have called this process "norm transmission" and explain its looming dangers.<sup>10</sup> Charles W. Kegley and Gregory A. Raymond explain that we are the leaders of the world. Everyone looks to us and models their behavior after ours. Kegley and Raymond correctly argue that if America continues to initiate preemptive wars across the globe (pretending that the "Bush Doctrine" makes such a practice legitimate), then that principle will spread just like copycat crimes. The whole world will erupt in a Vesuvius of preemptive strikes. Once the rule of law and diplomacy have been discarded, it will be hard to reestablish them. Is it in the interest of the United States to enshrine preemptive war as a legal basis for international relations?

## From Afghanistan-to Iraq-to Iran: the Issue of "Mission Creep"

The Congress authorized the president to take military action against the Taliban and Al Qaeda as a response to the 9/11 attacks on our nation. But within months of successfully confronting our foes in Afghanistan, the President offered us a new enemy that had nothing to do with the 9/11 attacks, spooking us with rhetoric about weapons of mass destruction. The President, as the self-anointed "decider," chose to take us into Iraq under a vague and never-defined conflict that he called "The War on Terror." This is a classic example of "mission creep." We agree on a common goal, and then it transforms into something different altogether. He beat the drum; we cheered. He was determined; we were compliant. He made his call; we let him do it. Fellow citizens, the President sent the best and the bravest of the American people-the men and women who have volunteered to serve in the U.S. military-to fight, to suffer, and to die in Iraq. It is time to ask, "Why? For what reason?"

There were no weapons of mass destruction. There was no yellow cake. The aluminum tubes were not intended for nuclear enrichment. There was no Al Qaeda presence to speak of in Iraq (but there is now). There were no portable vehicles designed to launch chemical weapons. The invasion has not "paid for itself." The war did not last six weeks or six months. The Iraqis do not see us as "liberators." The invasion has not paid for itself through unfettered access to Iraqi oil. There is no "mission accomplished." There is no "freedom on the march." We have not "turned the corner in Iraq." We are not in the "last throes of the insurgency." We were supposed to establish a functioning, pluralistic democracy in Iraq, yet we have unleashed the horrors of a sectarian civil war.

Citizens, we did not ask the hard questions before the invasion of Iraq. Will we make the same mistakes today and remain silent while we prepare to attack Iran or Syria?

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<sup>10</sup> Kegley & Raymond, "Global Terrorism and Military Preemption," p. 45.

## Ramifications of a Preemptive Attack on Iran & Syria in the World Community

An air strike or ground invasion against Iran or Syria would cause determined retaliation in both the short and long terms.<sup>11</sup> An escalating conflict will result in the massive loss of human life on all sides and foment an unpredictable and volatile expansion of the war on all fronts.<sup>12</sup> An attack against Iran or Syria would generate horrific yet incalculable consequences for our nation and the world in the immediate future and for generations to come. It would put our troops in Iraq in grave danger as the Iraqi Shiites rise up in arms to support their kindred Shiites in Iran.<sup>13</sup> It would wreak havoc, for the sectarian civil war—largely confined within the boundaries of Iraq—could transform itself into a regional war where the Iranians join together with the Iraqi Shiites and where the Saudi Arabians, Egyptians, and Jordanians intervene to protect their Sunni brethren.<sup>14</sup> We will have infuriated all sects and factions in the Islamic World, repulsing and estranging our moderate Arab friends and allies, while engendering scores of new enemies where there were none before. We will instantly unify the multitude of warring factions who presently are jockeying for position as they vie with one another for power; a preemptive attack on Iran or Syria will cause the different factions in the Middle East to put aside their mutual loathing and join together to fight their new, common enemy—the United States of America. As the violence grows—and it will—we will lose our friends and gain new enemies. For many in the Middle East, America would no longer be seen as the beacon of the free world but as a pariah.

Violence against Americans could become widespread and commonplace in many parts of the world, including Indonesia, the Philippines, and many locations in South America and Africa. The mayhem of these conflicts will place brave American soldiers in untenable situations where the enemy is ever changing and perpetually growing in strength, size, and conviction. International trade and commerce will become severely jeopardized. Economic security of American business interests will collapse as turbulent, destabilizing events sweep over the oil-producing regions of the world. Oil prices will skyrocket, and the economic opportunities that we have enjoyed for the last fifty years will wither.<sup>15</sup> The killing will continue, and with each dead Iranian or Syrian, we will spawn generations of fathers and mothers, sons and daughters, all vowing to avenge their loved one's death. The killing will continue, and for each dead American soldier we will generate untold suffering to their families and loved ones.

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<sup>11</sup> For analysis concerning the consequences of an attack, see Seymour Hersh, "The Coming Wars: What the Pentagon Can Now Do in Secret," *The New Yorker*, January 24, 2005; and Peter Baker, Dafna Linzer & Thomas E. Ricks, "US Is Studying Military Strike Options on Iran," *The Washington Post*, April 9, 2006.

<sup>12</sup> For one of the most thorough studies of the possible scenarios of how an attack on Iran would play out, consult James Fallows, "Will Iran Be Next? Soldiers, spies, and diplomats conduct a classic Pentagon war game—with sobering results," *The Atlantic Monthly*, December 2004. Sam Gardiner, a retired Air Force colonel who taught at the National War College, delivers the concluding summation: "You have no military solution for the issues of Iran. And you have to make diplomacy work."

<sup>13</sup> Kenneth Pollack, of the Brookings Institution stated "one of the things we have going for us in Iraq, if I can use that term, is that the Iranians really have not made a major effort to thwart us ... If they wanted to make our lives rough in Iraq, they could make Iraq hell." Quoted in Fallows, "Will Iran Be Next?" See also Seymour Hersh, "The Iran Plans: Would President Bush go to war to stop Tehran from getting the bomb?" *The New Yorker*, April 17, 2006.

<sup>14</sup> For a sobering comparison of what might happen if the Iraq civil war becomes a regional one, see Helene Cooper, "The Best We Can Hope For," *The New York Times*, January 14, 2007. Particularly relevant are the concluding statements by Stephen Biddle (who authored *Military Power: Explaining Victory and Defeat in Modern Battle*),

<sup>15</sup> "Those in the oil business I spoke to were less optimistic; one industry expert estimated that the price per barrel would immediately spike, to anywhere from ninety to a hundred dollars per barrel, and could go higher, depending on the duration and scope of the conflict." Hersh, "The Iran Plans."

The Iranians would undoubtedly encourage their surrogates, such as Hezbollah in Lebanon, to ramp up their attacks on Israel, and a full-fledged conflict between Israel and her neighbors could easily spin out of control.<sup>16</sup> Overnight, it could suck into its vortex the resources and fervor of the entire Islamic World. Enraged Muslims might band together to try to wipe Israel off the map, and Israel might respond with its nuclear arsenal-and where would that end?

The "unthinkable" calamity of nuclear war is made even more likely because our president has not disavowed the use of "bunker busters" against Iran's nuclear sites.<sup>17</sup> The United States and Soviet Union used to have a policy promising never to *initiate* the use of nuclear weapons-it was the threat of retaliation and mutually assured destruction that served as an effective deterrent to the use of nuclear arms. Sadly, Mr. Bush has disavowed this policy and has made clear that he considers a first-strike with nuclear warheads to be one of the options in his playbook. According to Mr. Bush, Mr. Cheney, and Ms. Rice, every option is on the table-including a nuclear strike.

### Epilogue

Mr. Bush has categorically failed with a plan to secure Iraq. He had no plan to secure the peace, and he had no workable plan to end the conflict. He had only infinite certitude and unfounded optimism, and taken alone, those two traits are not necessarily virtues. The judgments he has made suggest a specious lack of objectivity, diplomatic perseverance, and military acumen. A vast majority of Americans agree that it is irresponsible and strategically foolish for the president to escalate the war in Iraq against the wise counsel of the Iraq Study Group, of Generals Casey and Abeyta, and of much of the Congress. It is yet dramatically more dangerous for him to threaten to widen the conflict by spreading the war to new geographic territories and directly engaging new enemies.

A preemptive strike on Iran or Syria would produce unforeseen and calamitous consequences for the United States and the civilized world-not for years or decades, but for centuries. The Constitution itself is in peril. I respectfully submit that it is time to speak up, to debate and consider the perils facing our country, to uphold the rule of law, and to defend the Constitution of the United States-as each of us promised to do, many years ago on our first day of employment at Cal Poly. I ask that you debate and support the following resolution.

**It is time to keep our promise.**

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<sup>16</sup> Hersh, "The Coming Wars"; Fallows, "Will Iran Be Next?"

<sup>17</sup> Seymour Hersh (in "The Iran Plans") confirms, "the Pentagon this winter, calls for the use of a bunker-buster tactical nuclear weapon, such as the B61-11, against underground nuclear sites." He reveals profound misgivings by the top military leaders: "A former high-level Defense Department official stated, 'There are very strong sentiments within the military against brandishing nuclear weapons against other countries,' the adviser told me. 'This goes to high levels.' The matter may soon reach a decisive point, he said, because the Joint Chiefs had agreed to give President Bush a formal recommendation stating that they are strongly opposed to considering the nuclear option for Iran." Philip Giraldi provides disturbing evidence of the White House's nuclear war plans, stating "Several senior Air Force officers involved in the planning are reportedly appalled at the implications of what they are doing-that Iran is being set up for an unprovoked nuclear attack." Philip Giraldi, "Deep Background," *The American Conservative*, August 1, 2005.